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APPLE'S APP STORE FEES ARE 'HIGHWAY ROBBERY,' SAYS HOUSE ANTITRUST COMMITTEE CHAIR

"30 percent is unconscionable," says Congressman David Cicilline

By Nilay Patel @reckless Jun 18, 2020, 3:21pm EDT

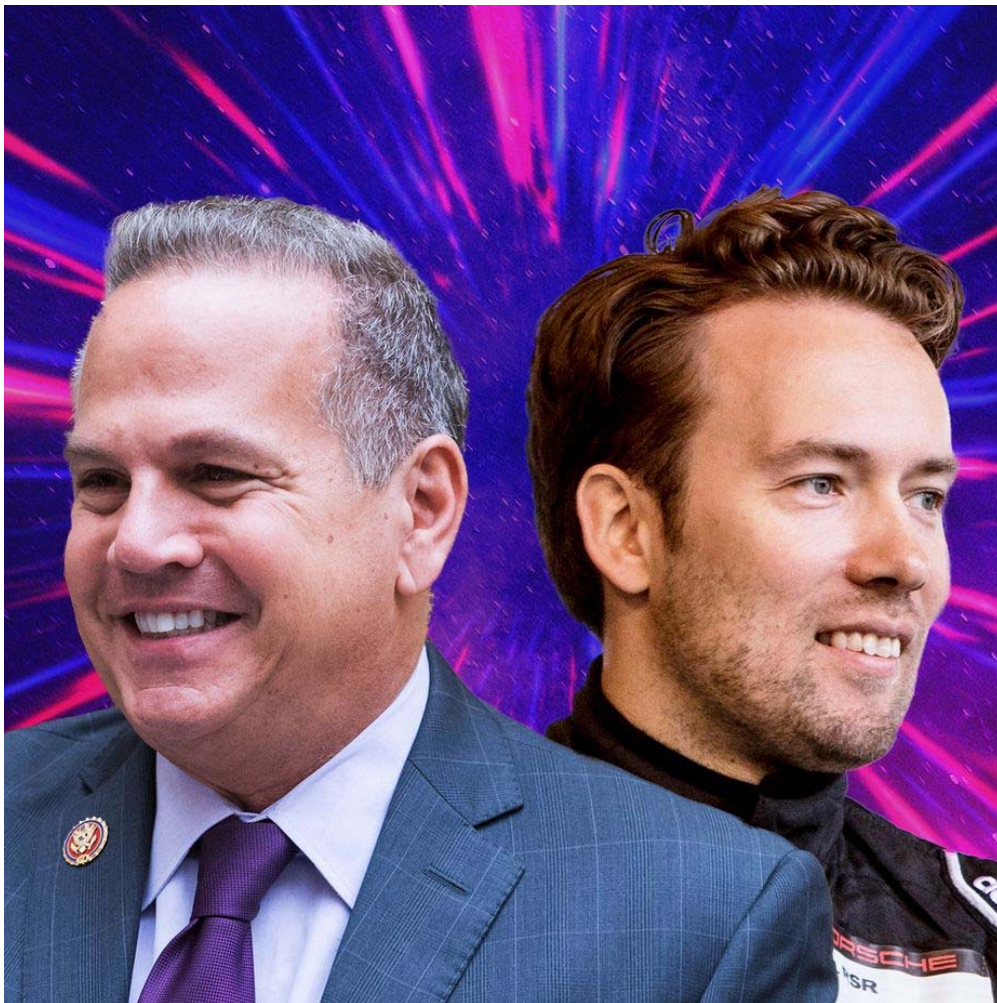


Photo illustration by William Joel | Photo By Tom Williams/CQ Roll Call, Brian Cleary/Getty Images

Apple is acting like a monopolist and a bully, according to the chairman of the House antitrust subcommittee.



Rep. David Cicilline (D-RI) joined *The Verge*cast along with Basecamp CTO David Heinemeier Hansson to discuss the plight of Hey, Basecamp's new \$99-a-year premium email service. Earlier this week, Heinemeier Hansson revealed that [Apple had rejected the Hey iPhone app from the App Store](#) because it didn't offer any way to sign up and pay in the app itself — which would require giving Apple a 30 percent cut of the fee.



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“Because of the market power that Apple has, it is charging exorbitant rents — highway robbery, basically — bullying people to pay 30 percent or denying access to their market,” said Rep. Cicilline. “It’s crushing small developers who simply can’t survive with those kinds of payments. If there were real competition in this marketplace, this wouldn’t happen.”

There’s been rumbling discontent from developers about how Apple runs the iPhone App Store for years now, but the Hey situation has brought it to startling light. Developers from companies big and small are telling reporters and analysts like Stratechery’s Ben Thompson that they are terrified of running afoul of Apple’s App Store policies, lest their apps get rejected and impact their businesses.

“Many people have come forward to share their experiences, who are terrified of economic retaliation, who are afraid they can’t survive the economic retaliation that these large platforms can impose because of the power that they have, and

we intend to pursue those allegations very seriously,” said Rep. Cicilline. “This is a real problem in the marketplace. This is a direct consequence of enormous market power, the fact that Apple is the gatekeeper for these developers, and we have heard many, many examples.”

“No one has a choice,” added Heinemeier Hansson. “Everyone is petrified... and then I understood. If you’re a publicly traded company, you cannot afford this. You cannot afford to file your earnings and say, ‘Oh, we just lost 50 percent of revenue last quarter because we had a spat with Apple.’ And if you’re a small developer, you can’t afford this literally because you will go broke — you will lose your house if they kick you out of the App Store.”

The timing of all this couldn’t be worse for Apple. On the same day Hey was rejected, the [EU announced an antitrust investigation into the App Store](#). And here in the US, the House Antitrust Committee, which is chaired by Cicilline, was asking the CEOs of Amazon, Google, Facebook, and Apple to testify as part of its larger investigation into the power of digital marketplaces. Most of the companies indicated they would participate, but Apple’s Tim Cook [appears to be holding out](#).

Rep. Cicilline and Heinemeier Hansson joined a special episode of *The Vergecast* to discuss the situation, the ongoing investigation, and what happens next.

You can listen to the entire conversation on *The Vergecast*, including an extended discussion with Heinemeier Hansson, Dieter Bohn, and Casey Newton, or read the transcript of the portion with both Heinemeier Hansson and Rep. Cicilline, edited for clarity, below.

Nilay Patel:

Congressman, I want to start with you. You were on the show in January. You have been leading an antitrust investigation for several months now into the big tech companies. What is the status of that investigation?

Rep. Cicilline:

Well, we are nearing completion of the investigation. We've been at it for about a year now, and we expect to have a final hearing sometime in July with the CEOs of the major technology platforms, but we have been busy at work collecting documents and evidence so that at the conclusion of the investigation we can generate a report on the status of competition in the digital marketplace and put forth a number of recommendations with respect to legislative action to bring a competition into the digital marketplace.

That final hearing with the CEOs — there's obviously been some news about that this week. It sounds like Google, Facebook, Amazon, they're saying, "We'll do it if everybody else does it." Have you heard anything from Apple?

Well, all of the companies pledged cooperation with the investigation when it began, and it's important, of course, that the CEOs of the major technology platforms — really, the decision makers — share their perspectives before the committee so we can complete the investigation.

That commitment to cooperate was made by Tim Cook when the investigation began, and we spoke again recently, and he again renewed his commitment to cooperate with the investigation. I was surprised and a little bit alarmed that the other three CEOs, through their counsel, confirmed their willingness to participate in a hearing before the committee and Mr. Cook declined, but I expect that when the hearing happens, we will have all four CEOs there.

This is the Congress of the United States conducting its first major antitrust investigation in 50 years, and their testimony is essential to completing this properly.

I don't want to get too hung up on your guest list, but it strikes me that Microsoft is not on that list. Was there a reason for that?

Well, the focus has really been on the digital marketplace, and the big actors in that space are Apple, Google, Facebook, and Amazon. Obviously, there are others, but that has been really the focus of the investigation of the digital marketplace in particular.

No one has heard from Larry Page in, I would say, 10 years? You're Congress, you could maybe make him talk to you. Was [the decision] to focus on the CEOs?

I think there's no question that Larry Page has information that would be useful in this investigation.

That is the backdrop. On Monday, we [also] heard the EU is opening an investigation into the App Store and Apple Pay. WWDC, which is Apple's developer conference, is next week.

David, you dropped a grenade into all of this with an email app. What happened with Hey?

Heinemeier Hansson:

Hey is a new email service we've been developing for the past two years. We've spent millions of dollars doing so, with the 56 people we have at the company, and we were just coming to conclusion. And just last Friday, we submitted our app for approval in the Apple App Store. We were so thrilled to get the approval. It's just that the V1 of the app is available in the App Store. It's always a nail-biting process — we thought we had checked every box. We have been in the

App Store for a very long time. We know what the both written rules are and what the unwritten rules are, and we thought we were in complete compliance, so when we got the approval, we thought, "Excellent."

Then we roll out the service broadly on Monday, and we submit a bug fix to our app, a version 1.01, and assume that this is just performance, it's going to slide right through, and users of this paid service are going to enjoy some bug fixes. Well, no.

We get a rejection, and we get a rejection that cites their section 3.1.1, which is this notorious section in their App Store policies that talk about whether you have to have in-app payments. But this is strange. We were literally just approved on Friday. Why are they bringing this up now? It doesn't apply to us. We followed all the unwritten rules, so we thought, "You know what? Apple's App Store policies [are] often called the 'wheel of misfortune,' so you try to just spin it again, and then you'll get a different reviewer, and they'll see it differently, and we'll go through."

So we spin it again. We submit another bunch of bug fixes and we get another denial.

This time, the denial is a little more strong. Our lead developer on the iOS app gets a call from Apple essentially saying, "This is not a mistake. Your application has been reviewed by the Apple App Review Board. They have found that it is a just and correct denial. In fact, the mistake was that we let you into the App Store in the first place. Give us a timeline by which you will start handing over 30 percent of your revenues through this app or we will kick you out of the App Store."

It didn't say, "Kick out of the App Store." It said, "Remove your application from availability in the App Store," or whatever euphemism, but the euphemism was even not that good! I would have expected something more circumspect, but no.

"YOU CAN'T COMPETE IN SOFTWARE TODAY IF YOU'RE NOT AVAILABLE ON MOBILE DEVICES, AND APPLE JUST CONTROLS ONE PART OF THAT DUOPOLY."

They essentially threatened to kick us out of the App Store, which — we've just launched this app. Everyone seems to be pretty happy about it. It's available in the App Store. It's got bunch of good reviews, I think it's got a 4.8 rating right now. And Apple is saying, "Unless you start paying us 30 percent of your revenues, we're going to remove the app," which for us is, I mean, that's going to, if no killed the business, it's going to kneecap it. You can't compete in software today if you're not available on mobile devices, and Apple just controls one part of that duopoly.

In the US, North America, for services charging 100 bucks a year, it is the lion's share of that part. They're not a minority player here.

So it was just very strange to us, especially because there's so much precedence here. We have another application, Basecamp, in the App Store that works exactly the same. You buy your subscription outside of the App Store, you go to the App Store to get a free app. This has worked for years and years. We still do this. We still submit updates to it.

Gmail sells an application in the App Store that's free to download. You buy a subscription to G Suite outside of that, you're fine. Microsoft sells an email service called Office 360 [sic], that you can download an Outlook client in the App Store, everything is fine. Why are we being singled out?

Of course, I thought it was just a mistake. Then I thought, "Hey, I just testified in front of Congress in January, about this very thing."

Congressman Cicilline, afterwards, we were talking, we're like, "Hey, if there's any retaliation, please let me know," and I thought, "You know what? That's not what Apple does. I've been an Apple fan for 20 years. I've been an Apple

evangelist for 20 years. They don't retaliate. That's not how they work," so when we got these letters... I'm still in disbelief.

I want to believe that this was somehow a mistake and somehow this is not what they're trying to do, but you know what? That's a fantasy. I've heard from dozens and dozens of developers. My Twitter DMs are exploding with exact copies of this story from other developers saying, "We were shook down the same way. They denied our app." Often very much on a bug fix update." They don't even necessarily deny it outright. You submit a set of updates, and all of a sudden, they come with the demand, "Give us 30 percent or we're going to shut you down."

David, I've got to I ask you, because so many people have said this. You're very successful. Basecamp is excellent at marketing. Did you do this on purpose? Did you time this to create this firestorm before WWDC?

I wish I was that smart. Imagine if I was that good at 4D chess. Imagine just the mechanics of this: first, you have to plant someone within Apple that *approves* the application, which, and then, what, I plant someone on Monday that then *disapproves* it? How does any of this work? How powerful do I have to be to orchestrate this?

I've heard that the Mac app was initially rejected. Is that true?

It was. The Mac app, we submitted the Mac app in the same way, and there, I will admit that we were ignorant. We had never submitted an app to the Mac store before. We'd always just distributed our software for the Mac directly, and we thought, "Do you know what? The Mac store sounds great, you get automated updates. That's fine."

We submitted the app naively with none of the unwritten rules observed. It was just a web app, like an Electron app. It got denied, and we went like, "Oh, yeah,

actually, I guess the Mac store is the same as the iOS store. They also want 30 percent.”

We said, “Okay, fine. That’s your choice to make. We’re not going to be in the Mac store,” so we took our Mac software, and we said, “We’re going to distribute it directly,” because on the Mac, you have the *choice*.

"I'M NOT COMPLAINING ABOUT THE MAC STORE. ON THE MAC, YOU HAVE THE CHOICE."

I’m not complaining about the Mac store. Okay, if they want to charge 30 percent in the Mac store, that’s fine. We don’t want to take the deal. We just distribute our software directly.

On the iPhone, you can’t do that. You cannot get software onto the iPhone unless you go through the App Store.

So if we had the power, if we have the choice to distribute software to the iPhone without going through the App Store, we would. We would just have a link on our website that said, “Here you go. That’s how you download the app for the iPhone,” and we’d be fine.

The problem with the iPhone is that Apple sits as a gatekeeper. It blew my mind when the EU announced their investigation because they were literally going through the points that we were having: the only way to get on the iPhone is through Apple. Apple is a gatekeeper. Apple shakes down businesses for these 30 percent, and no one has a choice.

This is what I’m hearing from all the developers that are reaching out for me. Everyone’s petrified. This is not just the small people. The number of huge applications, hundreds of millions in App Store fees that I spoke to yesterday, my mind exploded. How are we the first people to raise a fuss about this?

Then I understood. If you're a publicly-traded company, you can not afford this. You cannot afford to file your earnings saying, "Oh, we just lost 50 percent of revenue last quarter because we had a spat with Apple," and if you're a small developer, you can't afford this literally because you will go broke. You will lose your house if they kick you out of the App Store. We end up in this weird situation where, A, we're secure enough that we can do this and we can risk it, and B, they were stupid enough to pick on someone who won't shut up.

I think Apple knows that that's their clear error. I got to tell you.

Congressman, you've heard from David before at the hearing. You've heard from him now. We are hearing that a lot of developers feel this way, but they're scared to speak up. Have you heard from other developers as your investigation continues?

Rep. Cicilline:

This is actually a center, really, a core area of the investigation that is currently underway by the Antitrust Subcommittee, and we should really recognize that we have a long tradition in this country of these essential networks being developed and gatekeepers being denied access because of their outside power. That's what happened with railroads, and with telecom, with banks. When you think about the chief evil that antitrust is designed to combat, it's this economic coercion that has just been described.

"BECAUSE OF THE MARKET POWER THAT APPLE HAS, IT IS CHARGING REALLY EXORBITANT RENTS — HIGHWAY ROBBERY, BASICALLY"

Unfortunately, we have seen many, many examples of this where because of the market power that Apple has, it is charging really exorbitant rents — highway robbery, basically — bullying people to pay 30 percent or denying access to their market. It's a consequence of duopoly between Google and Apple in terms of iPhone and app technology, and it's crushing small developers

who just simply can't survive with those kinds of payments. And if there were real competition in this marketplace, this wouldn't happen.

So this is an area that the antitrust investigation, which is looking at the digital marketplace broadly, is very focused on.

And particularly with respect to Basecamp, this notion of retaliation — I just want to reassert, we're taking this investigation very seriously. Many people have come forward to share their experiences who are terrified of economic retaliation, who are afraid they can't survive the economic retaliation that these large platforms can impose because of the power that they have. And we intend to pursue those allegations very seriously, even once the report is issued. Because people need to be able to come forth and testify and share information with Congress in the context of this investigation.

But this is a real problem in the marketplace. This is a direct consequence of enormous market power — the fact that Apple is the gatekeeper for these developers. And we have heard many, many examples, and we all know of many examples where people are not able to access that marketplace because of the power that Apple has in this marketplace. There are really two companies that control it.

This is one of many issues we're looking at in our antitrust investigation. And we intend at the conclusion of the investigation to put forth some recommendations to respond to this.

Congressman, let me push on you a little bit. When we talk to folks in and around Apple, their response is, "Look, we invented the iPhone. We invented the App Store. We invented the market. We just put out a study saying half a trillion dollars worth of commerce moved through the store. We don't touch 85 percent of that money. These rules have been in place since 2010. If you don't like it, leave." Does that persuade you?

That's always the answer of monopolists: "if you don't like it, leave."

The whole idea is you're not allowed to engage in behavior which is anti-competitive, which allows you to use an enormous market share to shake down people — to demand ransoms, essentially — and that results in higher prices for consumers.

The whole reason that we have competition as a virtue — in that we have policies to promote competition — is because it promotes innovation. It makes space for the next great idea, the next great company. And it also drives down prices, gives consumers more choices.

"30 PERCENT IS UNCONSCIONABLE."

You cannot simply allow someone merely because they invented a system or a product to continue to enjoy that kind of monopoly power. It's contrary to our laws. It's unfair to new developers, new startups, and it hurts consumers.

The idea of exacting a 30 percent premium, on the surface — if you look at processing of a credit card, if that were really competitive, it'd probably be less than two to three percent. It's two to three percent now. If you had real competition in that area, you'd have an even lower percentage.

But 30 percent is unconscionable. But they can do it because it's the only way to access the market through the iPhone. And it's exactly the kind of absence of competition that we are focused on in our investigation. And the behavior of Apple in this one context — I wish it was the only example, there are many, many examples of this. Which is precisely why Tim Cook really needs come before the Antitrust Subcommittee and answer some questions about these practices, so that we can complete this investigation and make a set of good recommendations.

One of [Apple's] arguments here is very legalistic. [Apple] has this rule, 3.1.1, which David mentioned, and there's a sub-rule, 3.1.3. That rule lists the apps that are allowed to have [outside] payments, they're called "reader" apps. That [rule] is what Netflix and Spotify and all the rest take advantage of. Email apps are not in that rule. And they're saying, well, email apps were never in that rule. We are open. We just make the rules and enforce them.

There are two arguments here. One is, one, well, they made the rules; they're allowed to have rules for the stores. The other one is that a list of business models and apps that are approved by one gatekeeper seems bad to me.

Are you persuaded by the argument that the rules are clear and that they should just be able to enforce them?

[Laughs] Well, the rules are not clear at all.

But besides that, a company doesn't have the ability to make rules that violate competition policy or antitrust. The fact that they make rules that ensure that they are the gatekeeper to this marketplace is actually further proof that there's a problem in terms of competition in this marketplace.

So the notion that the company really believes you should get to do this, while interesting, is irrelevant in terms of a competition analysis and whether or not this marketplace is working and whether or not people are being required to pay rent because of this huge market share that Apple has.

"SOME CORPORATE BUREAUCRAT IS DECIDING WHAT APP WILL SUCCEED AND WHAT WILL FAIL BECAUSE THEY HAVE THAT KIND OF MARKET POWER. THAT'S A PROBLEM."

The idea that it's consistent with their practices is actually further proof that there's a problem, because this isn't just one instance. This is a practice or

policy of the company that I think just reveals that there's a serious problem when you have an absence of real competition in this marketplace and you have the market power that Apple has as a gatekeeper into this marketplace.

And their ability to just decide — some corporate bureaucrat is deciding what app will succeed and what will fail because they have that kind of market power. That's a problem.

David, you run a successful software company. Apple's argument is, well, we have to pay for the app store somehow. We have to have human curation, we have to run our app store magazine. They employ lots of people to write app reviews. And if we don't spend that money, we'll just be the Google Play Store, and that's bad. How would you propose that Apple cover the cost of the App Store?

Heinemeier Hansson:

How would I propose a \$1.5 trillion company pay to operate the App Store that —

Well, they didn't get to \$1.5 trillion because they were bad at business.

It's like the Simpsons episode. Microsoft didn't get rich in the 90s by paying.

No, this is nonsense on its face. Apple is the most successful, most profitable company of recent memory. They have money to pay people to look after the App Store. But do you know what? Even that point is irrelevant. If we were allowed the choice to essentially say, "Do you know what? We don't need a review from the very nice people who review apps at the App Store. We don't need to be in your lists that drive traffic." In fact, we thought we had already opted out of that by putting our app in the App Store with a shut door.

If you download the Hey app today, you face a shut door. You can't sign up. Apple can literally not drive any business to Hey because they explicitly had unwritten rules saying you shouldn't do that, so we didn't.

"THE ISSUE HERE IS CHOICE. WE HAVE TO HAVE CHOICE, OTHERWISE YOU DON'T HAVE COMPETITION. IF YOU DON'T HAVE COMPETITION, YOU HAVE ONE GATEKEEPER CONTROLLING EVERYTHING."

We just want the choice. Let us distribute software for the iPhone without paying the 30 percent ransom, and to some extent we're good. Because do you know what? I could have run another business. If I run — I don't know, maybe a gaming business, although let's talk to Tim Sweeney at Epic about that. I might have thought, do you know what? It's worth it. It's worth it. They send a lot of business my way, we can make a deal. 30 percent is still just bananas. Isn't the upper limit on credit card debt 29 percent or something? They're above the usury rates that are otherwise listed. So the 30 percent is just nonsense.

But for me, it's not about the rate. If they lower that rate to 15 percent, 10 percent, it wouldn't make a difference. The issue here is choice. We have to have choice, otherwise you don't have competition. If you don't have competition, you have one gatekeeper controlling everything.

So Apple can pay for the App Store however they like, just let us get software onto the iPhone without it. If they want to charge us on a time and materials basis, I'm willing to pay for that too. The app reviewer I think took at *least* 20 minutes to look at our app. They bill us at normal legal rates, maybe 1,000 bucks an hour — I'll pay the \$200 for having a reviewer make sure that there's no malware in our applications.

They do this on the Mac. You are allowed on the Mac to distribute software that can be signed by Apple, basically saying you're a reputable supplier. You don't have to pay the 30% ransom. Just give us that.

The most common argument is yes, but Mac users and iPhone users are different. The iPhone is deployed at this massive global scale. What we sell is security. What we sell is an integrated user experience —

Heinemeier Hansson:

You know what that sounds like? It sounds like the mafia. What we sell is protection. We make sure the street is clean. We make sure no other gangsters get in here. We're the only gangsters in town.

Rep. Cicilline:

That's the argument of every monopolist. "We're different. We're so valuable."

"THIS IS A CLASSIC PLAYBOOK."

This is a classic playbook where the monopolists capture control of a distribution network and then bully people, or charge ransom to access it.

You look at the history of the railroad monopolies and shippers and what they face. This is *exactly* what they do. And this is *exactly* the argument they make. And this is why preserving competition or creating the conditions where competition really exists in the digital marketplace is so critical to consumers. Because consumers are going to be denied access to a lot of good services and apps that would otherwise be available. And when they are made available, they're going to pay a premium for them because someone's going to pay that 30 percent, and it's the consumer. So this is why the absence of competition in the digital marketplace is so harmful.

Heinemeier Hansson:

Let me just follow up on that point. Two specific examples.

If you go to download Netflix today — Netflix opted out and said, we don't want to pay the 30 percent ransom, and they got in under this specialized rule because I guess Apple didn't want to pick a fight with Netflix directly.

You go to download that app, the first screen you see is a screen that makes no sense. It says, "I'm sorry you are here. You can't get in. Figure it out and then come back." How is that good for consumers? How is any consumer better off? How is Apple making things good for consumers? Right now with us, we have thousands of people who have downloaded this app. They're all happy about this app. If Apple kicks us out, how is that good for consumers? They can't get bug fixes, we can't make security patches. Who benefits here?

The only person who benefits, well, the only corporation that benefits is Apple. They want their 30 percent cut. And even on its face, the Netflix case, our case, it's not a benefit to consumers.

And to the final point of a premium, I believe that Spotify, if you buy a subscription through the in-app model, you're paying 30 percent more. Literally the premium goes straight to the consumer. The consumer is charged more because Spotify has to pay the monopoly rents.

Spotify is a big consumer business, that seems wrong. People might not know.

You're selling a \$100-a-year email app to power users who want a new way of thinking about email. You could make the argument that, particularly based on your marketing, your Twitter account, you could put that button in the app, you would get in the store and zero people would ever click it.

Heinemeier Hansson:

Yeah. And if you pay the gangster ransom, they won't smash your windows. They won't burn down your store and they won't smash your kneecaps. Do you know what? No. I'm not going to pay ransom.

This isn't about economics. This is about choice and it's about principles. We should not have one huge gangster in the mobile software business that can just run around and shake everyone down.

"WE SHOULD NOT HAVE ONE HUGE GANGSTER IN THE MOBILE SOFTWARE BUSINESS THAT CAN JUST RUN AROUND AND SHAKE EVERYONE DOWN."

And there's the other thing here. They've been emboldened. They say this has been in place since 2010. We've been in the App Store since I think 2011, 2012, or something like this. They start out soft, as all gangsters do. They work their way up. They pick on the little guy who has no voice, who has no platform, who don't dare speak up. Then they work their way up.

Now they've worked their way all the way up to us, and they're so bold, they're so brazen. Literally the week that the EU is announcing this, the Antitrust Committee is just sending out the invitation to Tim Cook, yet they don't feel like they have anything to fear. There's no repercussions coming, there's no accountability to be had, because they know this is probably going to take years and —

Hold on. I'm going to ask that question to the Congressman. Is this going to take years? When you saw this happen on the day you sent the invite, were you —

Rep. Cicilline:

I think David's point is an important one. I think the economic size and the economic power that these large technology platforms have they believe translates into certain political power.

And there's no question about it that one of the reasons we began this investigation is because we wanted to work hard to understand the marketplace, to understand how we could work to bring more competition into the marketplace. This has been a bipartisan investigation throughout.

"WE ARE COMMITTED TO COMPLETING THIS INVESTIGATION IN THE NEXT SEVERAL MONTHS."

That's why it's important that the American people see the CEOs who are the decision makers in these companies come before the committee and explain and answer some tough questions so we can complete our investigation.

But there's no question. You look throughout our history, there's a quick translation from enormous economic power to significant political power. And that's why taking on this issue is so important for all the reasons that have been described in this conversation.

We are committed to completing this investigation in the next several months, completing a report so that we have an opportunity in this Congress to introduce some legislation responsive to the absence of competition in the digital marketplace. And all of the harms it imposes in terms of privacy, in terms of control of your own data, in terms of consumer choices, in terms of innovation. This has significant implications on our economy, both in the short term and in the long term.

Heinemeier Hansson:

Let me just add to that real quick, because Congressman, you asked at the hearing that I attended, how much do you spend on lobbying? And we said, "We spend zero dollars."

I just spoke with a major technology company yesterday, who has an office in DC and was telling me about the amounts that the big companies are spending

on lobbying right now. And he said, “Do you know what, DC is the happiest it’s been in a very long time because everyone is making money right now. The amount of money that’s pouring in from big tech into lobbying efforts is just astounding.”

And this is the thing — we’re 56 people. We can’t spend millions of dollars every month on lobbying. The only thing we can say is like, hey, we’re being shaken down, and we need some urgent relief.

"FOR ME, IT'S NOT ABOUT ECONOMICS. IT'S ABOUT THE PRINCIPLE OF BEING SQUEEZED INTO A CORNER AND HAVING NOWHERE TO GO."

If Apple kicks us out of the App Store, follows through on their threat tomorrow, what are we going to do? They’re going to smash our kneecaps. And we may be laying in the hospital watching the TV months from now that there’s going to be some relief, that’s really great, but my kneecaps are still gone, right?

So I think that’s the other thing. We’re really kind of desperate. I said at the hearing, I ended it with like, “please, you’re our only hope.” We really don’t have anywhere to run. We don’t have anywhere to go.

And this is what just feels so wrong about this. And why, for me, it’s not about economics. It’s about the principle of being squeezed into a corner and having nowhere to go.

Rep. Cicilline:

You’re right, and it is about the economics, but that’s why this investigation is so critical because there are thousands of small businesses all across America that are facing the same kind of bullying, the same kind of gatekeeping from these large technology platforms. It’s the responsibility of Congress to answer those pleas and be sure that we are doing everything we can both to understand the marketplace, but then to fix it so that there’s real competition so innovators and

entrepreneurs like David can be protected and encouraged and grow, and the next great new businesses can be created in this country.

We had the field hearing in Colorado, and I think what really struck people from that hearing is they heard for the first time real examples of people that were being bullied, and ransoms being extorted from them as a result of the size of these large technology platforms.

And David's right, a lot of people are unwilling to come forward because they are fearful of economic retaliation. I'm grateful for his courage and others who have shared their experiences with our investigation because — you can understand with the kind of market share and market power that these large platforms have there's reluctance to come forward. Because you change one algorithm, you kick one person off your platform, and their business is over. This is real, and this is why this investigation is so serious.

When we spoke in January, you reminded me that Congress has many powers, but actually breaking up companies is not one of them. And we've already seen Apple kind of move in response to pressure from other regulators, right? They've opened up a little to Spotify. Daniel Ek back in May said, "I expect these platforms to open up in response to pressure." Do you think there needs to be some affirmative legal remedy from Congress — a new law, a new bill that talks about how platforms work? Or do you think the pressure will be enough?

Rep. Cicilline:

Oh, no.

I don't think there's any question that the large technology platforms have demonstrated unequivocally that we cannot rely upon them to regulate themselves or fix this problem alone.

"THIS WILL REQUIRE LEGISLATIVE ACTION."

This will require legislative action. It will require regulatory action and statutory changes. This is something that Congress has a responsibility to fix. The platforms are motivated by a single objective, to grow and make money. And good for them — I don't fault them for that — but it's our responsibility to be sure that they are doing that in a way consistent with our laws, consistent with our pro-competition policies, consistent with antitrust laws, and not using their market power to bully and exact ransoms and rents from folks that hurt consumers, hurt innovation, prevent people from creating and starting up new businesses. So I don't think there's any question that it will require legislative action.

The question is going to be, once we complete the report, and we come forward with a set of recommendations, is there enough courage collectively in the Congress of the United States to move forward and actually enact those changes, and I hope there will be. ■

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